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State v. Archuleta Appellant's Brief Dckt. 42294

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 42294
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2014-2262
v.)	
)	
MARKUS REY ARCHULETA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

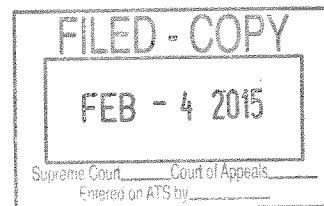
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STATEMENT OF THE CASE

Nature of the Case

Markus Rey Archuleta timely appeals from the district court's judgment of conviction. On appeal, Mr. Archuleta argues that the district court erred when it denied his motion for mistrial. Alternatively, Mr. Archuleta argues that the district court erred when it denied his motion to strike evidence, which the district court had previously ruled was inadmissible.

Statement of the Facts and Course of Proceedings

In January of 2014, a Rite-Aid loss prevention employee, David Duncan, called the police and reported a fraud in progress. (R., p.54; 05/08/14 Tr., p.76, Ls.11-16.) Mr. Duncan alleged that Mr. Archuleta was attempting to fraudulently return merchandise. (R., p.54.) The police responded and arrested Mr. Archuleta. (R., p.54.)

In February of 2014, the same employee called the police and said that Mr. Archuleta had entered the Rite-Aid again and accused Mr. Duncan of calling the police during the January 2014 incident. (R., p.55.) Mr. Duncan told the police that Mr. Archuleta also threw a box of band-aids at him and knocked merchandise onto the floor. (R., p.55.)

Police quickly arrived and began questioning Mr. Archuleta about his interaction with Mr. Duncan. (R., p.55.) After a brief conversation, the police arrested Mr. Archuleta for witness intimidation. (R., p.55.) The police searched Mr. Archuleta and discovered some pipes with white residue. (R., p.55.)

Mr. Archuleta was charged, by information, with disturbing the peace, possession of drug paraphernalia, possession of a controlled substance (methamphetamine), and a persistent violator enhancement. (R., pp.42-43, 67-68, 75-77.) Prior to trial, the State

filed two motions requesting the district court admit evidence under I.R.E. 609 and I.R.E. 404(b), both of which the district court denied. (R., pp.70-74, 78.) Some of the evidence which was excluded by the district court under I.R.E. 404(b) included any reference to Mr. Archuleta's interaction with Mr. Duncan in January of 2014. (R., pp.72-74, 78.)

The case proceeded to a jury trial, and the State's first witness testified as to the evidence which the district court previously excluded. When asked why he called the police in February 2014, Mr. Duncan testified that, "I had someone enter the store, approach me in an aisle, called out to me saying, 'Are you the mother F'er that called the cops on me.'" (05/08/14 Tr., p.77, Ls.5-13.) Mr. Archuleta's defense counsel immediately objected. (05/08/14 Tr., p.77, Ls.14-16.) Outside the presence of the jury, defense counsel noted that the district court previously excluded any reference to the January 2014 events, and he moved for a mistrial. (05/08/14 Tr., p.77, L.17 - p.78, L.4.) The State recognized the error and asserted that this was an accident. (05/08/14 Tr., p.78, Ls.5-9.) The district court ruled that Mr. Duncan's intent was irrelevant and the prior events were not supposed to be referenced. (05/08/14 Tr., p.78, Ls.10-12.) The State requested a limiting instruction instead of a new trial. (05/08/14 Tr., p.78, Ls.13-15.) Defense counsel responded by saying, "If the Court is not inclined to grant mistrial, we ask at least that [the court] order [the] statement [be] struck from the record and the jury not to consider it." (05/08/14 Tr., p.78, Ls.16-19.)

After expressly finding that there should have been no testimony referencing the prior events, the district court implicitly denied the motion for mistrial. (05/08/14 Tr., p.78, L.20 - p.80, L.1.) The district court also declined to strike the testimony, reasoning that it did not want to highlight Mr. Duncan's testimony. (05/08/14 Tr., p.78,

L.20 - p.80, L.1.) The jury trial proceeded, and there were no more references to the events which occurred in January of 2014. (*See generally* 05/08/14 Tr.)

The jury ultimately acquitted Mr. Archuleta on the disturbing the peace charge and on the possession of drug paraphernalia charge, but rendered a guilty verdict on the possession of methamphetamine charge. (R., pp.106-108.) The jury also convicted Mr. Archuleta on the persistent violator enhancement. (R., p.111.) Thereafter, the district court imposed a unified sentence of seven years, with one year fixed. (R., pp.113-114.)

Mr. Archuleta timely appealed. (R., pp.120-122.)

ISSUES

1. Did the district court commit reversible error when it denied Mr. Archuleta's motion for a mistrial?
2. Did the district court commit reversible error when it failed to provide a limiting instruction after the State's witness testified to evidence which the district court previously ruled was inadmissible?

ARGUMENT

I.

The District Court Committed Reversible Error When It Denied Mr. Archuleta's Motion For A Mistrial

A. Introduction

Both parties and the district court agreed that the introduction of Mr. Duncan's testimony constituted a defect in the legal proceedings. As such, the limited question on appeal is whether the district court committed reversible error when it denied Mr. Archuleta's motion for a mistrial. Mr. Archuleta argues that the district court committed reversible error when it denied Mr. Archuleta's motion for mistrial because Mr. Duncan's testimony was not struck from the record. Since the jury had been previously instructed to consider all of the evidence unless the district court instructed otherwise, it must be presumed that the jury considered Mr. Duncan's testimony during its deliberations. Therefore, this evidence contributed to the jury's verdict.

B. The District Court Committed Reversible Error When It Denied Mr. Archuleta's Motion For Mistrial

The following standards are utilized when the denial of a motion for mistrial is reviewed on appeal:

[T]he question on appeal is not whether the trial judge reasonably exercised his discretion in light of circumstances existing when the mistrial motion was made. Rather, the question must be whether the event which precipitated the motion for mistrial represented reversible error when viewed in the context of the full record. Thus, where a motion for mistrial has been denied in a criminal case, the "abuse of discretion" standard is a misnomer. The standard, more accurately stated, is one of reversible error. Our focus is upon the continuing impact on the trial of the incident that triggered the mistrial motion. The trial judge's refusal to declare a mistrial will be disturbed only if that incident, viewed retrospectively, constituted reversible error.

State v. Urquhart, 105 Idaho 92, 95 (Ct. App. 1983). “Error is not reversible if this Court can conclude beyond a reasonable doubt that the verdict would have been the same if the error had not occurred.” *State v. Pickens*, 148 Idaho 554, 558 (Ct. App. 2010); see also *State v. Perry*, 150 Idaho 209, 222 (2010) (“A defendant appealing from an objected-to, non-constitutionally-based error shall have the duty to establish that such an error occurred, at which point the State shall have the burden of demonstrating that the error is harmless beyond a reasonable doubt.”)

The following facts set forth the basis for Mr. Archuleta’s motion for a mistrial. After Mr. Duncan was sworn, he was asked, “Do you remember an incident occurring that led you to call law enforcement?” (05/08/14 Tr., p.77, Ls.7-8.) Mr. Duncan said “I do” and the State asked “what was that?” (05/08/14 Tr., p.77, Ls.9-10.) Mr. Duncan replied, “I had someone enter the store, approach me in an aisle, called out to me saying, ‘Are you the mother F’er that called the cops on me.’” (05/08/14 Tr., p.77, Ls.11-13.) Mr. Archuleta’s defense counsel immediately objected and, outside of the jury’s presence, argued:

[The] Court instructed the state’s witness not [to] talk about the prior incident calling law enforcement. I know Mr. Ellsworth told the court he told Mr. Duncan not to say that. I have no reason to disbelieve that Mr. Ellsworth did not do that. Mr. Duncan did it anyway, and at this point I think I have no choice but to ask for mistrial for referencing calling the cops in the prior incident that the court instructed excluded.

(05/08/14 Tr., p.77, L.21 - p.78, L.4.) The State asserted that this must have been unintentional as Mr. Duncan was not accustomed to testifying. (05/08/14 Tr., p.78, Ls.5-9.) The district court said, “Well, whether it was done intentionally or not, it wasn’t supposed to be referenced” (05/08/14 Tr., p.78, Ls.10-12.) Mr. Archuleta’s defense counsel then suggested, “If the Court is not inclined to grant mistrial, we ask at

least that [you] order that [the] statement [be] struck from the record and the jury not to consider it.” (05/08/14 Tr., p.78, Ls.16-19.)

The district court denied both the motion for mistrial and the motion to strike evidence, reasoning:

I think it would be preferable not to call further attention to it. And so I’m going to allow it to continue. I’ll consider how the Court can instruct in a way that doesn’t end up underlining it. I’m really concerned about there’s not supposed to be any reference to prior stops, it’s supposed to start with just yelling and swearing at this fellow, Mr. Duncan, and we are supposed to focus on what happened on February 15th, not some other day, not some other time.

. . . .

I’ll consider how I will instruct on this without causing more problems. At this point I think it’s been nipped in the bud. As long as it stays in the bud, we will keep going.

(05/08/14 Tr., p.78, L.20 - p.80, L.1.) Since the district court ruled, and the State conceded, that this evidence was improperly adduced at trial, the limited question on appeal is whether this error was reversible error.

The introduction of Mr. Archuleta’s prior interaction contributed to the jury’s verdict because from the beginning of the trial the jurors were made aware of the fact Mr. Archuleta had done something which prompted Mr. Duncan to call the police. The jury would conclude that Mr. Archuleta is the kind of guy that regularly breaks the law. Additionally, the jury would also assume that Mr. Archuleta is a confrontational person who would be willing to provoke a person whom Mr. Archuleta determined had harmed him in the past. This negative character evidence was the first evidence the jury heard and it colored the jury’s perception throughout the trial. Moreover, the jury might have thought that Mr. Archuleta did something malicious. It follows that the jury might have convicted him for one offense to ensure that he received some punishment.

Additionally, the introduction of Mr. Archuleta's prior interaction with Mr. Duncan contributed to his conviction in this matter as the State's evidence was very weak. Mr. Archuleta was acquitted for the possession of drug paraphernalia charge, which is an indicator that the jury did not find the evidence as to that charge compelling. (R., p.107.) Moreover, the State never presented any evidence that Mr. Archuleta knew the pipes contained methamphetamine residue. (05/08/14 Tr., p.175, Ls.6-10.) Based on this weak evidentiary showing, Mr. Archuleta's prior interaction with Mr. Duncan might have affected the guilty verdict.

The district court's failure to strike the evidence only exacerbated the fact that the inadmissible character evidence influenced the jury's perception of the entirety of the evidence admitted at the trial. "Where improper testimony is inadvertently introduced into a trial and the trial court promptly instructs the jury to disregard such evidence, it is ordinarily presumed that the jury obeyed the court's instruction entirely." *State v. Norton*, 151 Idaho 176, 193 (Ct. App. 2011). Since there was no limiting instruction, it should be presumed that the jury considered the erroneously adduced evidence throughout the rest of the trial. Support for this proposition can be found in the initial jury instructions provided by the district court. Prior to the trial, the district court told the jury that testimony from witnesses was considered evidence it must consider. (05/08/14 Tr., p.62, Ls.6-7.) The district court then instructed the jury about the purpose of an objection and that it can consider evidence in the event the objection is overruled. (05/08/14 Tr., p.63, Ls.16 - p.64, L.21.) The district court instructed the jury:

Once in a great while I'll order that something be stricken. It doesn't really come up much in real life, it comes up when there's not a problem with the question, the question was an okay question, but sometimes a witness will branch off into something else and they will not answer in a responsive way or there will be a problem with their response. If I order you to strike evidence, disregard it, don't make it a factor in your determination in this

case and don't base any decision in this case on evidence which has been stricken. It's just not good enough evidence for you to rely on.

(05/08/14 Tr., p.64, L.22 - p. 65, L.9.) Since it is presumed that a jury will adhere to the district court instructions, *Norton*, 151 Idaho at 193, it follows that the jury adhered to the foregoing instructions and considered the erroneously adduced evidence throughout the trial.

As a final note, the district court determined that it would not give the limiting instruction because it did not want to highlight the issue. However, defense counsel already objected and the jury left the room. (05/08/14 Tr., p.77, Ls.11-20.) This action had already brought significant attention to Mr. Duncan's testimony. Since the bell had already been rung, there was no way of de-emphasizing that evidence other than striking it.

In sum, the district court erred when it denied Mr. Archuleta's motion for mistrial because the evidence pertaining Mr. Archuleta's prior interaction with Mr. Duncan indicated that Mr. Archuleta had done something which prompted Mr. Duncan to call the police. It also indicated that Mr. Archuleta is confrontational and returned to the store to provoke Mr. Duncan. Since the evidence was not struck from the record, it should be presumed that the jury adhered to the district court's instructions and considered this information during deliberations. When this is viewed in light of the fact the jury acquitted Mr. Archuleta on the possession of drug paraphernalia charge, the district court committed reversible error when it denied Mr. Archuleta's motion for mistrial.

II.

The District Court Committed Reversible Error When It Failed To Provide A Limiting Instruction After The State's Witness Testified To Evidence Which The District Court Previously Ruled Was Inadmissible

Mr. Archuleta argues that the district court committed a legal error when it failed to strike Mr. Duncan's testimony. See *State v. Trowbridge*, 97 Idaho 93, 98-99 (1975) (holding that a trial court must strike inadmissible evidence); see also *State v. Hodges*, 105 Idaho 588, 592-593 (1983) (holding that it is error to introduce inadmissible evidence and the question on appeal is whether that error was harmless); *State v. Goodrich*, 97 Idaho 472, 478-479 (1976) (Failure to provide a limiting instruction as to inadmissible evidence constitutes legal error). The district court's failure to strike the inadmissible evidence constituted legal error. Therefore, the only question on appeal is whether the district court's failure to strike the testimony was harmless.

Mr. Archuleta argues that this error contributed to his conviction and, therefore, was not harmless error. See *State v. Perry*, 150 Idaho 209, 222 (2010) ("A defendant appealing from an objected-to, non-constitutionally-based error shall have the duty to establish that such an error occurred, at which point the State shall have the burden of demonstrating that the error is harmless beyond a reasonable doubt.") The specific arguments as to harmlessness were set forth in Section I, *supra*, and are incorporated herein.

CONCLUSION

Mr. Archuleta respectfully requests that this Court vacate his judgment of conviction and remand this matter for a new trial.

DATED this 4th day of February, 2015.

A handwritten signature in black ink, appearing to read 'SHAWN F. WILKERSON', is written over a horizontal line.

SHAWN F. WILKERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of February, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

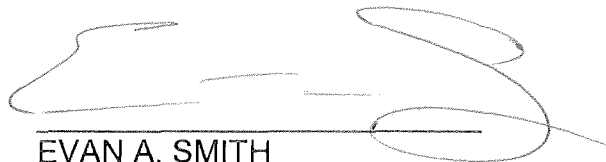
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A handwritten signature in black ink, appearing to read "Evan A. Smith", written over a horizontal line.

EVAN A. SMITH
Administrative Assistant

SFW/eas